

CV 13

1003

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

ROBERT GREENFIELD,

Civil Action No.:  
*WE EX-13-1*

Plaintiff,  
-against-

**COMPLAINT**

MULLOOLY, JEFFREY, ROONEY & FLYNN LLP,

**DEMAND FOR JURY TRIAL**

Defendant(s).

X

Plaintiff ROBERT GREENFIELD ("Plaintiff"), by and through his attorneys, M. Harvey Rephen & Associates, P.C., as and for its Complaint against Defendant MULLOOLY, JEFFREY, ROONEY & FLYNN LLP, hereinafter referred to as "Defendant(s)", respectfully sets forth, complains and alleges, upon information and belief, the following:

*2013 FEB 26 AM 11:01  
ASAP  
FILED  
CLERK*

#### **INTRODUCTION/PRELIMINARY STATEMENT**

1. Plaintiff brings this action on his own behalf for damages, and declaratory and injunctive relief, arising from Defendant's violation(s) of § 1692 et seq. of Title 15 of the United States Code, commonly referred to as the Fair Debt Collections Practices Act ("FDCPA").

#### **PARTIES**

2. Plaintiff is a resident of the State of New York, residing at 549 Oceanpoint Ave., Cedarhurst, NY 11516.

3. Defendant, MULLOOLY, JEFFREY, ROONEY & FLYNN LLP, is a New York law firm, organized as a limited liability partnership, with its main office at 6851 Jericho Turnpike, Suite 220, Syosset, NY 11791.

4. Defendant is a "debt collector", as that phrase is defined and used in the FDCPA under 15 U.S.C. § 1692a (6).

**JURISDICTION AND VENUE**

5. The Court has jurisdiction over this matter pursuant to the following statutes: 28 U.S.C. § 1331, 15 U.S.C. § 1692 et seq. and 28 U.S.C. § 2201. If applicable, the Court also has pendent jurisdiction over the state law claims in this action pursuant to 28 U.S.C. § 1337(a).

6. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2).

**FACTUAL ALLEGATIONS**

7. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "6" herein with the same force and effect as if the same were set forth at length herein.

8. On information and belief, Defendant, on behalf of a third-party, or, on behalf of itself as purchaser of the Debt (as hereinafter defined), began collection efforts to collect an alleged consumer debt (the "Debt").

9. On information and belief, and better known to Defendant, Defendant began its collection efforts and campaign of communicating with Plaintiff by calling Plaintiff on March 27<sup>th</sup>, 2012. During the telephone conversation, Defendant referred to Plaintiff as "the Defendant" and proceeded to threaten Plaintiff with legal action and a judgment. Defendant also stated that: (i) legal fees would be added to the judgment against Plaintiff; (ii) the sheriff would add a penalty of ten percent (10%) interest (the "Penalty") to the Debt; and (iii) Defendant would send the sheriff to Plaintiff's workplace to collect the Debt and the Penalty. By engaging in the foregoing activities, Defendant violated 15 U.S.C. § 1692e

preface, e(10), e(5) and f preface.

10. Defendant's engagement in the activities described in items 8 and 9 above constitutes "false, deceptive and misleading" statements under 15 U.S.C. § 1692e preface and e(10). Calling Plaintiff "the "Defendant" in Defendant's phone call to Plaintiff, is misleading, false and deceptive (15 U.S.C § 1692e preface and e(10)), as well as, unfair and unconscionable (15 U.S.C § 1692f preface), in that Plaintiff was not, on the date of the communication (i.e., March 27<sup>th</sup>, 2012), a defendant in any lawsuit filed by Defendant against Plaintiff.

11. Defendant violated 15 U.S.C. § 1692e preface, e(10), e(5) and f preface, because Defendant: 1) presumed winning a non-existent lawsuit; 2) falsely stated that the sheriff would add the Penalty to a non-existent judgment; and 3) threatened action (i.e., sending the sheriff to Plaintiff's workplace) without a legal basis therefor.

12. Defendant violated 15 U.S.C. § 1692e preface, e(10) and f preface by quantifying the damages Plaintiff would be liable for, in Defendants communication to Plaintiff (i.e., threatening a judgment of \$14,000 and an additional \$1,000 in legal fees, for a total of \$15,000). The Defendants violations are deceptive, false and misleading, as well as unfair and unconscionable because Defendant was giving the false impression that a Defendant, and not a court, determines the imposition and amount of a judgment.

#### **FIRST CAUSE OF ACTION**

***(Violations of the FDCPA)***

13. Plaintiff repeats, reiterates and incorporates the allegations contained in paragraphs numbered "1" through "12" herein with the same force and effect as if the same

were set forth at length herein.

14. Defendant's debt collection efforts attempted and/or directed towards the Plaintiff violated various provisions of the FDCPA, including but not limited to 15 U.S.C. § 1692e preface, e (10), e (5) and f preface.

15. As a result of Defendant's violations of the FDCPA, Plaintiff has been damaged and is entitled to damages in accordance with the FDCPA.

**DEMAND FOR TRIAL BY JURY**

16. Plaintiff ROBERT GREENFIELD hereby respectfully requests a trial by jury for all claims and issues in its Complaint to which it is or may be entitled to a jury trial.

**PRAYER FOR RELIEF**

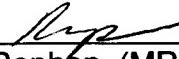
**WHEREFORE**, Plaintiff ROBERT GREENFIELD demands judgment from the Defendants MULLOOLY, JEFFREY, ROONEY & FLYNN LLP, as follows:

- A. For actual damages provided and pursuant to 15 U.S.C. § 1692k(a)(1);
- B. For statutory damages provided and pursuant to 15 U.S.C. § 1692(2)(A);
- C. For statutory damages provided and pursuant to 15 U.S.C. § 1692k(2)(B);
- D. For attorneys' fees and costs provided and pursuant to 15 U.S.C. § 1692(a)(3);
- E. A declaration that the Defendant's practices violated the FDCPA;
- F. For any such other and further relief, as well as further costs,

expenses and disbursements of this action, as this Court may deem just and proper.

Dated: New York, New York  
February 21, 2013

Respectfully submitted,

By:   
M. Harvey Rephen, (MR3384), Esq.  
M. HARVEY REPHEN & ASSOCIATES, P.C.  
708 Third Avenue, 6<sup>th</sup> Floor  
New York, New York 10017  
Phone: (212) 796-0930  
Facsimile: (212) 330-7582

*Attorney for the Plaintiff Robert Greenfield*

To: MULLOOLY, JEFFREY, ROONEY & FLYNN LLP  
6851 Jericho Tpke., Suite 220  
Syosset, NY 11791.

*(Via Prescribed Service)*

Clerk,  
United States District Court, Eastern District of New York  
*(For Filing Purposes)*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

CASE NO.:

ROBERT GREENFIELD,

Plaintiff,

-against-

MULLOOLY, JEFFREY, ROONEY & FLYNN LLP,

Defendant(s),

---

COMPLAINT

---

*M. HARVEY REPHEN & ASSOCIATES, P.C.  
708 Third Avenue, 6<sup>th</sup> Floor  
New York, New York 10017  
Phone: (212) 796-0930  
Facsimile: (212) 330-7582*

---